

MORTON J. KRAKOW

FEBRUARY 28, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 2267]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2267) for the relief of Morton J. Krakow, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

The amendment is as follows:

Page 1, line 9, strike out "Infantryman's", and insert "Infantryman".

PURPOSE

The purpose of the proposed legislation is to pay Morton J. Krakow, of Arlington, Va., the sum of \$190 in full settlement of all claims against the United States arising as a result of his being awarded the combat infantryman badge after a delay of 9 years, by which time the law authorizing additional payment to holders of the badge had been repealed.

STATEMENT

The facts concerning this claim are fully set forth in the report of the Department of the Army which is part of this report. That report is as follows:

JULY 13, 1955.

Hon. EMANUEL CELLER,

*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter enclosing a copy of H. R. 2267, 84th Congress, a bill for the relief of Morton J. Krakow, and requesting a report on the merits of the bill.

The Department of the Army has no objection to the above-mentioned bill.

This bill provides as follows:

"That the Secretary of the Treasury is hereby authorized and directed to pay, out of any money not otherwise appropriated, to Morton J. Krakow, of Arlington, Virginia, the sum of \$190. The payment of such sum shall be in full settlement of all claims of the said Morton J. Krakow against the United States arising when, by reason of error on the part of the Army, the award of the Combat Infantryman's Badge to him was delayed for nine years. Even though the award thereof was made retroactive, the Act authorizing additional pay for holders of the badge had been repealed before award to him was actually made, thus depriving him of the additional compensation he would otherwise have received."

Records of the Department of the Army show that Morton J. Krakow was born in New York City, N. Y., on June 5, 1925; that he was inducted into the Army on October 13, 1943, in the grade of private; that thereafter he served outside the continental United States as an infantryman in France, Belgium, and Germany during the period of September 30, 1944, until April 11, 1946; and that he was honorably discharged from the Army on April 24, 1946, in the grade of private, first class.

On July 7, 1953, Mr. Krakow sent a letter to this Department requesting that he be awarded a Combat Infantryman Badge for his service during World War II, stating as the basis of his claim the following:

"I served with the 1st Infantry Division, 26th Regiment, Company G. This frontline combat duty commenced on the 21st day of October 1944 and extended for a period of 6 or 7 days. Due to a hearing condition, of which I am in receipt of service-connected disability compensation from the Veterans' Administration, received as a result of heavy enemy artillery bombardment, I was sent to a United States Army general hospital in France. Upon release from the hospital I was placed on a non-combat-duty status.

"While my records indicate that I was issued a campaign star for the Rhineland campaign, they do not indicate that I was ever awarded a Combat Badge."

Pursuant to this request pertinent records were examined to determine Mr. Krakow's eligibility for this award and, as a result thereof, by letter orders dated August 18, 1953, he was informed that the Bronze Star Medal had been awarded to him " * * * for exemplary conduct in ground combat against the armed enemy on or about October 25, 1944, in the European theater of operations, while assigned as private, 26th Infantry Regiment," and that the Combat Infantryman Badge "is awarded * * * for satisfactory performance of duty in active ground combat * * *." The effective date of this latter award was stated to be October 25, 1944.

The Combat Infantryman Badge was established by the War Department (now Department of the Army) as a means of maintaining the high standards required of the Infantry, and to foster esprit de corps in Infantry units. War Department Circular No. 269, dated October 27, 1953, which established the award, also set forth the eligibility requirements for its issuance as follows:

"3. *Combat Infantryman Badge.*—Infantrymen, including officers, establish eligibility to wear the Combat Infantryman Badge by—

"(a) Exemplary conduct in action against the enemy, or

"(b) By satisfactory performance of duty in action against the enemy in a major operation as determined and announced by the theater commander."

The act of June 30, 1944 (ch. 335, 58 Stat. 648), as amended (10 U. S. C. 1430 (a), 1946 edition, repealed by subsec. 531 (b) (36), Career Compensation Act of 1949, 63 Stat. 839), provided, in part, as follows:

"That during the present war and for six months thereafter, any enlisted man of the combat ground forces of the Army who is entitled, under regulations prescribed by the Secretary of War, to wear the * * * Combat Infantryman Badge, shall be paid additional compensation at the rate of * * * \$10 per month when he is entitled to wear the Combat Infantryman Badge * * *."

"Sec. 2. The appropriations heretofore or hereafter made for 'Finance Service, Army,' shall be available for carrying into effect the provisions of this Act.

"Sec. 3. The provisions of this Act shall become effective as of January 1, 1944."

The purpose of this legislation was set forth in the report of the Committee on Military Affairs (S. Rept. No. 964, 78th Cong., 2d sess., p. 2 (1944)), which reads, in pertinent part, as follows:

"The proposed additional pay is not intended as money compensation for the hazards and hardships involved, as such things cannot be paid for in money. It is intended as a symbol of the importance of the infantrymen. Such pay would be continuous throughout the period that the person concerned is entitled to wear one of the infantryman badges and is not at all dependent upon continuous participation in actual combat."

Paragraph 4, Army Regulations 35-1510, dated October 10, 1946, which were issued by the Secretary of War pursuant to the act of June 30, 1944, defines "a member of the combat ground forces" as " * * * An enlisted man is 'a member of the combat ground forces' only if assigned to one of the following:

"(a) Infantry.

"* * * * *

This paragraph subsequently was amended by section 5, War Department Circular No. 16, dated January 18, 1947, to read as follows:

"* * * For pay purposes, paragraph 4a, AR 35-1510, which became effective January 1, 1947, is interpreted as follows:

"1. Any enlisted man who has been awarded the Combat Infantryman Badge * * * and whose right to wear the badge has not been revoked is considered as being assigned to the Infantry within the meaning and intent of paragraph 4a, AR 35-1510 * * *."

In view of these facts and of the authorities hereinbefore cited, it appears that if Mr. Krakow had been awarded the Combat Infantryman Badge prior to the enactment of subsection 531 (b) (36) of the Career Compensation Act of 1949, supra, which withdrew the authorization for paying additional compensation to holders of such badge, he would have been entitled to receive an additional sum of \$10 per month from October 1944 until his discharge in April 1946, or approximately \$190. However, although the award was made effective October 25, 1944, the orders issuing the badge were executed subsequent to October 1, 1949, the effective date of the repeal of the act of October 30, 1944. Consequently, there is no legal obligation on the part of the United States to pay to Mr. Krakow any additional compensation.

Inasmuch as the issuance of the Combat Infantryman Badge to Mr. Krakow was delayed through administrative error on the part of this Department (the claimant being eligible therefor as of October 25, 1944), and as the award proposed in H. R. 2267 is fair and reasonable, the Department of the Army has no objection to the enactment of this legislation.

For the purpose of accuracy it is recommended that, if this bill is favorably considered by the Congress, the designation of the award "Combat Infantryman's Badge" on line 9, page 1, of the bill be changed to "Combat Infantryman Badge."

The cost of this bill, if enacted, will be \$190.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

(Signed) ROBERT T. STEVENS,
Secretary of the Army.

The Department of the Army observes that the delay in the issuance of the Combat Infantryman Badge to Mr. Krakow was the result of an administrative error, and that the payment proposed by this bill is fair and reasonable. The Army has interposed no objection to the enactment of the bill. In view of these facts, the committee recommends that the bill be favorably considered.

DEPARTMENT OF THE ARMY,
OFFICE OF THE ADJUTANT GENERAL,
MILITARY PERSONNEL RECORDS CENTER,
St. Louis, Mo., August 18, 1953.

Subject: Letter orders, Combat Infantryman Badge.
To: Mr. Morton J. Krakow, Arlington, Va.

1. Under the provisions of Army Regulations 600-70, the Combat Infantryman Badge is awarded to Morton J. Krakow, 33749155, for satisfactory performance of duty in active ground combat while assigned as private, 26th Infantry Regiment. The effective date of award is October 25, 1944.

2. Under the provisions of Public Law 351, dated October 12, 1949, no additional pay shall accrue by virtue of this award.

By order of the Secretary of the Army:

[SEAL]

ALBERT A. LINDQUIST,
Adjutant General.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington 25, D. C., December 1, 1954.

Mr. MORTON J. KRAKOW,
Arlington, Va.

DEAR MR. KRAKOW: Further reference is made to your letter of September 24, 1954, requesting review of settlement dated September 14, 1954, which disallowed your claim for Combat Infantryman Badge pay incident to your military service. The claim was asserted on the basis of Department of the Army letter orders dated August 18, 1953, awarding you the Combat Infantryman Badge and stating the effective date of the award to be October 25, 1944, but advising that no additional pay would accrue by reason of the provisions of Public Law 351, dated October 12, 1949.

Your claim was disallowed because the law which authorized additional compensation for individuals entitled to wear the Combat Infantryman Badge had been repealed prior to the date of the order awarding you the badge. You contend that it was the Army's fault that the badge was not awarded to you in time and that the date of the order is immaterial since an earlier specific effective date was stated.

The act of June 30, 1944 (58 Stat. 648), provided as follows:

"That during the present war and for six months thereafter, any enlisted man of the combat ground forces of the Army who is entitled, under regulations prescribed by the Secretary of War, to wear the * * * Combat Infantryman Badge, shall be paid additional compensation at the rate of * * * \$10 per month when he is entitled to wear the Combat Infantryman Badge * * *."

* * * * *

"SEC. 3. The provisions of this Act shall become effective as of January 1, 1944."

Paragraph 3 of Army Regulations 35-1510, dated October 10, 1946, provided as follows:

"Effective date of additional pay—(a) *Infantryman Badge*.—The effective date of additional Infantryman Badge pay (either expert or combat) will be the date of the order announcing the badge award, unless an earlier specific effective date is stated in the order. However, in no case will payment be made for any period prior to January 1, 1944."

The act of June 30, 1944, which was treated by the Department of the Army as permitting a retroactive effective date for pay purposes, was expressly repealed effective October 1, 1949, by section 531 (b) of the Career Compensation Act of 1949 (63 Stat. 838, 839), prior to the time the Department awarded you the badge. After the repeal of the act of June 30, 1944, it was too late to grant any pay benefits and there was no longer any authority to fix an effective date for pay purposes. Even though the Army may have been at fault in not awarding the badge to you until after the statute was repealed, that affords no legal basis for payment of your claim since no action could be taken under the statute, to authorize such a payment, after the statute had been repealed and was no longer in existence.

In these circumstances, this Office had no alternative but to disallow your claim and such action must be sustained.

Very truly yours,

FRANK H. WEITZEL,
Acting Comptroller General of the United States.